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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re M.A., a Person Coming Under the Juvenile Court Law.	
SONOMA COUNTY HUMAN SERVICES DEPARTMENT, Plaintiff and Respondent, v. M.A., Defendant and Appellant.	A134637 (Sonoma County Super. Ct. No. 3708-DEP)

We are familiar with the facts of this case through our review of a petition for extraordinary writ pursuant to California Rules of Court, rule 8.452 in a related case, *M.A. v. Superior Court* (Jan. 18, 2012, A133633). There, we denied a petition brought by M.A. (Mother) challenging the juvenile court's order setting a permanent plan hearing for her two older children, G.J.A. and O.A. (collectively, the siblings). In this appeal, Mother challenges the juvenile court's assumption of jurisdiction over another child, M.A. (Minor), and its dispositional order denying reunification services. We affirm.

I. BACKGROUND

A. The Sibling Cases

Many of the background facts are contained in our opinion in *M.A. v. Superior Court*, and we will not repeat them here. In summary, the dependency proceedings as to

G.J.A. and O.A. began in November 2009, shortly after O.A. was born. The petitions as to both children included allegations related to Mother's substance abuse. The petition as to the older child, G.J.A., alleged in addition that Mother had a history of domestic violence and had exposed G.J.A. to domestic violence by brandishing a kitchen knife at Mother's 16-year-old sister. The juvenile court sustained the allegations of the petitions and ordered reunification services for Mother. At the 18-month review hearing in May 2011, the juvenile court ordered that Minors be placed with Mother and that family maintenance services be provided.

Supplemental petitions were filed on behalf of G.J.A. and O.A. in July 2011, alleging that Mother and her live-in boyfriend had been involved in an incident of domestic violence the previous month. Mother had told her therapist that she and her boyfriend had argued and he grabbed her by the throat, threw her on the bed, and held her down. G.J.A., who was five years old, came in, saw what was happening, and swore at the boyfriend. The boyfriend threatened to hit G.J.A. before calling Mother a bitch, telling her she was worthless, and leaving. The therapist believed the boyfriend was jealous of G.J.A. and competed with him for Mother's attention. Mother told a social worker that she and her boyfriend were both jealous, that they had argued, that she tried to restrain him physically as he was leaving, and that he resisted her and pushed her down onto the bed. The social worker testified that Mother told her G.J.A. had walked into the room as the boyfriend was pinning her down on the bed, and attacked the boyfriend because he was afraid the boyfriend was hurting Mother. At the time, Mother was pregnant with M.A., the minor at issue in the current appeal.

The social worker told Mother and her boyfriend that the children would be removed if they continued to live together. However, during a July 2011 unannounced visit to the home, G.J.A. told the social worker the boyfriend slept in the home every night and that he lived there. G.J.A. also told the social worker Mother had hit his hands a month previously because he had tried to steal something from a store, and that she told him she would burn his hands on the stove if he ever stole anything.

On October 24, 2011, the juvenile court sustained allegations, based on the domestic violence incident, that the relationship between Mother and her boyfriend placed G.J.A. and O.A. at substantial risk of mistreatment, and that Mother had a history of domestic violence that had been previously found true by the court. The court found Mother's progress toward alleviating or mitigating the causes necessitating placement had been minimal, denied reunification services to her, and ordered a permanent plan hearing pursuant to Welfare and Institutions Code[1] section 366.26 (.26 hearing). Mother petitioned for extraordinary relief, and in *M.A. v. Superior Court*, we denied her petition on the merits.

B. The Current Appeal

Minor was born in August 2011 and promptly detained. The Department filed a petition pursuant to section 300. As later amended, the petition alleged that the relationship between Mother and her boyfriend, Minor's father (Father)[2] placed Minor at risk of mistreatment in that Mother had a history of domestic violence that had been previously sustained by the court; that there had been a domestic violence incident between Mother and Father in June 2011, in which five-year-old G.J.A. was present and tried to intervene to protect Mother; and that Mother minimized the risks of exposure to domestic violence on the siblings. (§ 300, subd. (b).) The amended petition also alleged abuse of a sibling, based on the dependency of G.J.A. and O.A. (§ 300, subd. (j).)

In the disposition report, the Sonoma County Human Services Department (the Department) recommended that Mother not be offered reunification services, but that services be provided for Father. The Department took the position that, in light of Mother's failure to reunify with her other children after 18 months of services, she would not benefit from further services. Mother had attended all scheduled visits and had been attentive and affectionate toward Minor. The Department also reported that although

[1] All statutory references are to the Welfare and Institutions Code. All rule references are to the California Rules of Court.

[2] Father is not the father of G.J.A. or O.A. He is not a party to this appeal.

Mother and Father had told the social worker they had not been in contact with each other since September 2011, they had in fact had contact; when the social worker called Father's phone, Father's father answered and said Father was with Mother.

A contested jurisdiction and disposition hearing took place in December 2011. Father was not present; the Deputy County Counsel told the juvenile court Mother had told a Department employee that Father had returned to Mexico.

The social worker assigned to the case testified that when the case began, Mother was already engaged in services through the dependencies for G.J.A. and O.A. Those services, which consisted of individual parenting classes, individual therapy, and random drug testing, continued as part of Minor's dependency. Mother had been attending therapy regularly. She had been visiting with Minor, and the visits had been going well. Minor had been assessed for possible developmental problems.

Mother testified that she was working on anger management with her therapist. When asked about the June 2011 incident of domestic violence, she said Father had provoked her, and that she had to defend herself. She acknowledged, however, that she had grabbed Father's shirt as he was trying to leave their apartment. She had looked for domestic violence classes in Spanish, and was apparently waiting for a referral; however, she did not believe domestic violence, jealousy, or inability to manage her anger had been problems in her relationship with Father.

Mother testified she had not seen Father since July, except for court hearings and visits with Minor. According to Mother, Father "showed up" with Minor some weeks previously. She also testified that she and Father had not been together since he left the home in July 2011, and that he left two or three weeks after the domestic violence incident, after a social worker told the couple that one of them would have to leave the home. Elsewhere in her testimony, however, she stated that Father left the home the morning after the June 2011 domestic violence incident.

Mother's therapist testified that Mother was working on anger management in her therapy. During therapy provided as a result of the dependency proceedings for G.J.A. and O.A., Mother had discussed her history of sexual abuse, which had begun in

childhood. The therapist had asked the Department to provide more sessions in order to address Mother's problems, but the Department was slow in responding, although it ultimately authorized an additional 12 sessions. Mother had also discussed aspects of her relationship with Father, including the fact that he would become angry if she wanted to leave the apartment or go outside and play with her children. Mother was aware of Father's "jealous behaviors" when she moved in with him, apparently in late May 2011. She told her therapist that she herself had initiated the domestic violence incident in June 2011. The therapist thought Mother was about a third of the way into her therapy.

Sandra Echavarria testified that she provided parent education to Mother after a referral by the Department in March 2010, during the dependency proceedings for G.J.A. and O.A. According to the referral, G.J.A. had a history of difficult behavior and had been competing for Mother's attention during visits. The goals of the therapy were to help Mother with "practicing quality time, showing affection, giving instructions, and providing age-appropriate activities." During visits, Mother was able to implement the techniques Echavarria taught her, was affectionate toward both boys, and shared her time with them. Echavarria received another referral in November 2010, as Mother was going to start overnight visits with the two boys, with the goals of "more [e]ffective parenting, limit setting, better verbal communications, and feeling words increased in vocabulary." With Echavarria, Mother learned about child development, ways to manage behavior, and problem-solving strategies. Echavarria believed Mother had made reasonable efforts to address the problems for which she had been referred, given her circumstances and background, and had made slow progress. She described Mother's improvement in parenting G.J.A. as "minimal." She had no concerns about how Mother parented O.A.

Mother had not told Echavarria that she had become involved with Father or that they were living together; as a result, Echavarria had not discussed with Mother the impact that relationship might have on her relationship with G.J.A. Echavarria agreed that Mother's statement to a social worker that she had threatened to burn G.J.A.'s hands on a stove if he stole again showed a lack of insight and appropriate parenting. Echavarria also acknowledged that in September 2011, she told a social worker she had

taught Mother everything she could have taught her during the time they were working together and that Mother was having a very difficult time implementing the strategies and tools Echavarria had taught her. In October, Echavarria told the social worker that she thought Mother was not committed to trying strategies more than once or twice. In October 2011—after Minor was born—Echavarria noticed that Mother seemed depressed and offered her a referral to a perinatal specialist. Mother initially wanted the service, but refused to see the counselor when the counselor made a house call.

Mother presented evidence that she had made good progress in addressing her problems with substance abuse, and the Deputy County Counsel acknowledged that she had made progress.

The juvenile court sustained the allegations of the amended petition on December 19, 2011. It found Mother had not made reasonable efforts to address the problems that led to the siblings' dependency, and denied reunification services to Mother under section 361.5, subdivisions (b) and (c). In doing so, it found Mother had failed to reunify with Minor's siblings after they were removed from her care, that Mother had not subsequently made a reasonable effort to treat the problems that led to the removal of the siblings, and that reunification with Mother would not be in Minor's best interest.

II. DISCUSSION

A. Mootness

We first consider the Department's contention that Mother's appeal has been made moot by later events, specifically the trial court's May 17, 2012 action in setting a .26 hearing in this case, which was scheduled for September 13, 2012. Mother did not file a petition for extraordinary writ pursuant to rule 8.452 challenging this order. The Department has already filed two motions to dismiss this appeal as a result of this order and a subsequent .26 hearing, both of which we denied. We likewise decline the Department's request, made in its respondent's brief, that we dismiss the appeal as moot.[3]

[3] Mother filed her opening brief on June 12, 2012. The Department filed their motions to dismiss on August 20, 2012 and September 20, 2012. After being granted two extensions, the Department filed its respondent's brief on November 13, 2012.

As Mother notes, "[t]he question of mootness must be decided on a case-by-case basis. [Citation.] An issue is not moot if the purported error infects the outcome of subsequent proceedings." (*In re Dylan T.* (1998) 65 Cal.App.4th 765, 769; see also *In re C.C.* (2009) 172 Cal.App.4th 1481, 1488.) The juvenile court's actions in assuming jurisdiction and denying reunification services unquestionably affected the outcome of subsequent proceedings. Accordingly, we will consider the merits of her appeal.

B. Jurisdictional Finding on Domestic Violence

Mother contends the evidence does not support the juvenile court's finding that it had jurisdiction over Minor based on Mother's history of domestic violence, including the June 2011 incident between Mother and Father. According to Mother, her past actions were insufficient to show that, at the time of the dependency proceeding at issue here, Minor was at risk of being harmed by domestic violence in the future. She relies upon *In re Rocco M.* (1991) 1 Cal.App.4th 814, 824, which states, "While evidence of past conduct may be probative of current conditions, the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm. [Citations.] Thus the past infliction of physical harm by a caretaker, standing alone, does not establish a substantial risk of physical harm; '[t]here must be some reason to believe the acts may continue in the future.' " (But see *In re David H.* (2008) 165 Cal.App.4th 1626, 1642–1644 [questioning *In re Rocco M*. and holding that in absence of unusual circumstances, allegation that child had suffered serious physical harm inflicted nonaccidentally by parent or guardian was sufficient to establish jurisdiction under § 300, subd. (a).)

In our decision denying the writ petition filed in the sibling action—challenging an order made less than two months before the order at issue here—we rejected Mother's challenge to the sustained allegation of domestic violence, holding that the juvenile court "could reasonably conclude Mother was not yet able to protect Minors from her pattern of engaging in domestic violence and that there would be a substantial danger to [the siblings'] health, safety, or well-being if they were returned to Mother." (*M.A. v. Superior Court* (Jan. 8, 2012, A133633) at p. 8.) The evidence here too—including not

only the evidence of the June 2011 incident, but also Mother's denial at the contested hearing in this matter that she had a problem with domestic violence or anger—is sufficient to support the juvenile court's finding.

In any case, Mother does not dispute that the juvenile court properly assumed jurisdiction based on the allegations under section 300, subdivision (j), that petitions as to G.J.A. and O.A. had been filed and sustained, that Mother had been provided with 18 months of reunification services for the siblings, that the siblings were again detained in July 2011 and a supplemental petition filed, and at the October 2011 jurisdictional/dispositional hearing on the supplemental petition in the sibling cases, the court ordered no further services for Mother and set a .26 hearing. Mother acknowledges that this basis for jurisdiction is "unassailable." As noted in *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451, "When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over a minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence."

Accordingly, we reject Mother's challenge to the juvenile court's assumption of jurisdiction over Minor.

C. Bypass of Reunification Services

The juvenile court bypassed reunification services pursuant to section 361.5, subdivisions (b) and (c), finding that the court had ordered termination of reunification services for Mother relating to the siblings, that Mother had not subsequently made a reasonable effort to treat the problems that led to the siblings' removal, and that reunification would not be in Minor's best interest.[4]

[4] Section 361.5, subdivision (b)(10) provides that reunification services need not be provided to a parent where the court, finds, by clear and convincing evidence, "[t]hat the court ordered termination of reunification services for any siblings or half siblings of

Mother makes two challenges to the juvenile court's ruling bypassing reunification services: that there was no substantial evidence that she had not made a reasonable effort to treat the problems that led to G.J.A. and O.A.'s removal, and that the evidence showed reunification would be in Minor's best interest. "Where the court makes factual findings that a bypass section applies, we review those factual findings under the substantial evidence standard. [Citation.] We do not reweigh the evidence or make credibility determinations. We review the entire record in the light most favorable to the trial court's findings to determine if there is substantial evidence in the record to support those findings. [Citation.] Interpretations of statutes, however, are independently reviewed on appeal as questions of law." (*A.A. v. Superior Court* (2012) 209 Cal.App.4th 237, 242.)

Mother's first contention is that the problem that led to the removal of G.J.A. and O.A. was her drug use, and that she made reasonable efforts—and indeed, good progress—in treating that problem. Mother's drug use, however, was not the only problem that led to G.J.A. and O.A.'s removal. As we have explained, the November 2009 petitions as to both G.J.A. and O.A. included allegations related to Mother's substance abuse; the petition as to the older child, G.J.A., alleged in addition that Mother had a history of domestic violence and had exposed G.J.A. to domestic violence by brandishing a kitchen knife at Mother's 16-year-old sister. The July 2011 supplemental petitions—which led to G.J.A. and O.A. being once again removed from Mother's care—included allegations that there was a domestic violence incident between Mother and Father in June 2011, and the supplemental petitions were later amended to add the

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the child because the parent or guardian failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a) and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to the removal of the sibling or half sibling of that child from that parent or guardian." Section 361.5, subdivision (c) provides in pertinent part that "[t]he court shall not order reunification for a parent or guardian described in paragraph . . . (10) . . . of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child."

allegation that Mother had a history of domestic violence that had been previously sustained by the court. The court found the allegations of the supplemental petition true on October 24, 2011, and in *M.A. v. Superior Court*, we concluded that based on the evidence before the court in those cases, "[t]he juvenile court could reasonably conclude Mother was not yet able to protect Minors from her pattern of engaging in domestic violence and that there would be a substantial danger to their health, safety, or well-being if they were returned to Mother." (*M.A. v. Superior Court* (Jan. 8, 2012, A133633) at p. 8.)

Based on the evidence before it in *this* proceeding, the juvenile court could likewise reasonably conclude Mother had not made reasonable efforts to address her problems with domestic violence. As explained in *R.T. v. Superior Court* (2012) 202 Cal.App.4th 908, 914–915, "The reasonable effort requirement focuses on the extent of a parent's efforts, not whether he or she has attained 'a certain level of progress.' [Citation.] 'To be reasonable, the parent's efforts must be more than "lackadaisical or half-hearted." ' [Citations.] However, '[t]he "reasonable effort to treat" standard "is not synonymous with 'cure.' " ' [Citation.] [¶] . . . [T]he 'reasonable effort' language in the bypass provisions [does not] mean that *any* effort by a parent, even if clearly genuine, to address the problems leading to removal will constitute a reasonable effort and as such render those provisions inapplicable. It is certainly appropriate for the juvenile court to consider the *duration, extent and context* of the parent's efforts, as well as any other factors relating to the *quality and quantity* of those efforts, when evaluating the effort for reasonableness. And while the degree of progress is not the *focus* of the inquiry, a parent's progress, or lack of progress, both in the short and long term, may be considered to the extent it bears on the *reasonableness* of the effort made. [¶] Simply stated, although success alone is not the sole measure of reasonableness, the *measure* of success achieved is properly considered a factor in the juvenile court's determination of whether an effort qualifies as reasonable."

The evidence here showed that Mother was receiving individual therapy and was working on anger management. However, on October 24, 2011, in the siblings' cases,

less than two months before the order challenged on in this appeal, the juvenile court found Mother's progress toward alleviating or mitigating the causes necessitating placement had been "minimal." Even after engaging in the June 2011 incident of domestic violence, Mother still testified in this action that she did not believe domestic violence, jealousy, or inability to manage her anger had been problems in her relationship with Father. (See *In re Gabriel K.* (2012) 203 Cal.App.4th 188, 197 ["One cannot correct a problem one fails to acknowledge."].) Indeed, in denying reunification services, the juvenile court referred to "the lack of insight that the mother has, the choices the mother's made despite ongoing therapy, her unwillingness to provide information to her therapist that would have allowed for more meaningful intervention [and] counseling." On this record, the juvenile court could reasonably conclude Mother had not made reasonable efforts to treat the problems that led to the removal of G.J.A. and O.A.

Mother also argues the juvenile court should have concluded reunification services were in Minor's best interest. "Section 361.5, subdivision (c) enables a parent to obtain reunification services notwithstanding [the applicability of a section 361.5, subdivision (b), bypass provision] where the parent demonstrates reunification is in the child's best interest by offering evidence of, among other things, his or her current ability to parent. To determine whether reunification is in the child's best interest, the court considers the parent's current efforts, fitness, and history; the seriousness of the problem that led to the dependency; the strength of the parent-child and caretaker-child bonds; and the child's need for stability and continuity. [Citations.] A best interest finding requires a likelihood reunification services will succeed; in other words, 'some "reasonable basis to conclude" the reunification is possible . . . .' " (*In re Allison J.* (2010) 190 Cal.App.4th 1106, 1116.)

The juvenile court could reasonably conclude Mother did not meet her burden to show reunification was in Minor's best interest. Although Mother had been attentive and affectionate toward Minor during visits, there was no indication the two shared a strong bond, since Minor was removed from Mother's care shortly after her birth. And there was evidence not only that Mother did not acknowledge the problems that led to the dependency, but also that she had not persisted in trying the parenting strategies she had

been taught in connection with her other children, and that she had refused the services of a perinatal specialist when she was depressed after Minor was born. We see no error in the juvenile court's ruling.

III. DISPOSITION

The orders appealed from are affirmed.

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Rivera, J.

We concur:

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Ruvolo, P.J.

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Reardon, J.